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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Kevin Retlich

Serial No.: 09/672,935

Filed: September 28, 2000

For: MULTILINGUISTIC INDUSTRIAL  
CONTROL AND MONITORING  
SYSTEM

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Group Art Unit: 2178

Examiner: Stork, Kyle R.

Atty. Docket: ALBR:0088/YOD/EUB  
00AB191

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING  
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:

December 29, 2006

Date

*Melissa Neumann*

Melissa Neumann

**INTERVIEW SUMMARY**

Dear Sir:

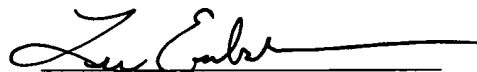
Applicants thank Examiner Stork and Supervisory Examiner Hong for their participation in separate telephonic interviews with the undersigned representative on December 14, 2006. In these interviews, the Notification of Non-Compliant Appeal Brief mailed November 29, 2006, was discussed. More specifically, Applicants' representative noted that this Office communication was sent in error. Particularly, the communication alleged that the Appeal Brief filed May 30, 2006, failed to present an argument for each ground of rejection on appeal in accordance with 37 C.F.R. § 41.37(c)(1)(vii). As discussed in the interviews, however, this assertion is simply incorrect. The four grounds of rejection are, in fact, separately argued in respective sections 7.A., 7.B., 7.C., and 7.D. of the Appeal Brief. Consequently, the assertion that the Appeal Brief is non-compliant is untenable.

Additionally, in the Office communication, the Examiner attempted to justify the allegation of non-compliance by noting that the argument of the first ground of rejection included subheadings identifying certain claims by number, while the separate arguments with respect to the other three grounds of rejection did not include such subheadings. However, as discussed in the interviews, and as would be appreciated by one versed in statutory and regulatory interpretation, there is a significant difference between the term “should” (which is used in 37 C.F.R. § 41.37(c)(1)(vii) with respect to the claim-identifying subheadings), and the terms “must” or “shall.” As used throughout the Code of Federal Regulations, including Title 37, the terms “must” and “shall” denote mandatory requirements. Conversely, the term “should,” as used in federal regulations, refers to recommended or advisory procedures, *not mandatory requirements*. In fact, even the Manual of Patent Examining Procedure clearly indicates that such subheadings are *optional*. M.P.E.P. § 1205.02, page 1200-15. As such, Applicants respectfully reiterate that there is no supportable rationale or justification for the present Notification of Non-Compliant Appeal Brief, and request withdrawal of this erroneous Notification.

In the interview, Examiner Hong indicated that he would instruct Examiner Stork to proceed with preparation of an Examiner's Answer to the Appeal Brief filed May 30, 2006. In accordance with these discussions, Applicants respectfully request that examination of this application proceed with either the mailing of an Examiner's Answer, a non-final Office Action, or a Notice of Allowance. If the Examiner believes an additional telephonic interview will help speed this application towards issuance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: December 29, 2006



L. Lee Eubanks IV  
Reg. No. 58,785  
FLETCHER YODER  
P.O. Box 692289  
Houston, TX 77269-2289  
(281) 970-4545

CORRESPONDENCE ADDRESS  
ALLEN-BRADLEY COMPANY, LLC  
Patent Department/704P Floor 8 T-29  
1201 South Second Street  
Milwaukee, Wisconsin 53204  
Attention: Mr. Alexander Gerasimow  
Phone: (414) 382-2000